



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202 – 2733

March 25, 2014

Mr. John Edgcomb  
Edgcomb Law Group  
One Post Street, Suite 2100  
San Francisco, California 94104

Re: Arkwood Inc. Superfund Site - December 11, 2013 Meeting Follow-up;  
EPA Responses to Issues Raised in Letters Dated Oct. 29, 2013 and Nov. 20, 2013

Mr. Edgcomb:

This letter is intended to summarize issues involving the Arkwood, Inc. Superfund site, Boone County, Arkansas ("site") that were raised in your letters to me dated October 29, 2013 and November 20, 2013, and discussed between staff and managers of U.S. Environmental Protection Agency, (EPA) Region 6 and Headquarters and McKesson representatives at the meeting in Dallas, Texas on December 11, 2013 and in telephone conversations with you subsequent to the December 11th Dallas meeting.

**Your October 29, 2013 letter**

**McKesson Issue**

1. "On-going meetings, discussions and emails between EPA and the landowner's representative, Curt Grisham, regarding site conditions and status, without McKesson involvement..."
2. "The landowner's contractual obligation to McKesson not to discuss this Site with any regulatory agency without McKesson's prior consent, which has not been given, and McKesson's on-going request that EPA not discuss this matter further with the landowner or his representative...."

**EPA Response:**

This response answers the issues raised in both 1) and 2) above. At the meeting in Dallas on December 11, 2013, the EPA indicated that the Agency strives to respond to public inquiries concerning sites over which it exercises statutory authority. In general, EPA affords members of the public every opportunity to have input, ideally meaningful, into the Superfund decision-

making process at sites in their communities. Region 6 will continue to be responsive to inquiries from any member of the public, particularly concerning a site in their community.

As we discussed at the December 11th meeting, the EPA is not a party to the agreement that precludes the landowner from discussing the Arkwood site with any regulatory agency and is therefore not bound by this or any provision in the agreement. However, as the Region also explained, the EPA does not consider the son of the landowner, Mr. Curt Grisham, to be just a member of the public. Rather, when Congressman Steve Womack's office identified Mr. Curt Grisham as representing his father concerning the Arkwood site in the Congressional inquiry to EPA, the Region decided that the status of Mr. Curt Grisham at EPA must be consistent with his deemed status outside of Region 6 EPA. The EPA therefore found that Mr. Curt Grisham represents his father, Mr. C.C. "Bud" Grisham, and acts on his father's behalf in matters at the EPA concerning the Arkwood site. The EPA will, of course, continue to be responsive to Mr. Curt Grisham concerning matters involving the Arkwood site and, with the exception of responses to FOIA requests from Mr. Grisham, we will provide notice to McKesson of our responses to Mr. Curt Grisham, as appropriate. A letter stating that Mr. Curt Grisham communicates with the EPA in a representative capacity, and on behalf of his father, has been mailed today to Mr. Bud Grisham.

### **McKesson Issue**

3. "EPA's refusal to withdraw the Site's "ready for reuse" designation ..."

### **EPA Response:**

At the December 11<sup>th</sup> meeting, Region 6 advised that it would withdraw the "Site Wide Ready for Anticipated Use" (SWRAU) designation for the Arkwood site. The Region explained that the deficiencies in the August 30, 2010 institutional control for the site and the dioxin reassessment underway at the site were valid reasons for withdrawing the SWRAU. However, in a subsequent telephone conversation with you on January 29, 2014, I informed you that a Superfund manager, with authority, having obtained more information about the site, including rationales for withdrawing a SWRAU, reconsidered this decision and determined that the SWRAU designation would not be withdrawn. I explained to you that the SWRAU Coordinator in EPA Headquarters advised that a deficient institutional control was not a ground for withdrawing the SWRAU. The Region's objective is to seek the execution and filing of the revised final institutional control, the Corrected Deed Notice and Restrictions, during the Spring of 2014. I also explained to you that the SWRAU Coordinator in Headquarters advised the Region that the on-going dioxin assessment at the site did not require the withdrawal of the SWRAU. According to the coordinator, dioxin reassessments are or will be underway at Superfund sites throughout the Regions. Yet no SWRAU has been or would be withdrawn because of an on-going dioxin assessment at the site. Even with the SWRAU remaining in place for the Arkwood site, the EPA believes that, with the possible consideration of a concrete slab over the surface soils as the physical foundation for a proposed reuse activity on the Arkwood

site, no proposed reuse of the site is feasible as long as the dioxin assessment is underway because of the currently unanswered questions about the extent, treatment, etc. of the dioxin at the site.

**McKesson Issue:**

4. "The status of the pending amended deed restriction recordation process and the EPA's proposed response to McKesson's redline changes..."

**EPA Response**

The Region incorporated comments on the draft revised deed notice from EPA Region 6 and staff and managers, EPA Headquarters staff, the Arkansas Department of Environmental Quality staff and managers, Mr. Curt Grisham and McKesson. The Region requested comments on the draft from Mr. Bud Grisham. When additional revisions were recommended on the revised draft Corrected Deed Notice and Restrictions, the Region considered and incorporated comments made by McKesson. A final Corrected Deed Notice and Restrictions was mailed to Mr. Bud Grisham on March 21, 2014 with a request for signature and filing no later than April 30, 2014.

**McKesson Issue:**

5. The status of property sale negotiations between McKesson and property owner...

**EPA Response:**

The EPA has no opinion on the status of sale negotiations between McKesson and the property owner.

**McKesson Issue**

6. EPA's improper charging to McKesson as administrative oversight costs the extensive Freedom of Information Act ("FOIA") responses costs attributable to repeated demands made by the landowner's agent.....

This response answers this issue raised in your October 29, 2013 and November 20, 2013 letters concerning FOIA charges and the Arkwood site. As the Region explained in the December 11, 2013 meeting, McKesson was not charged for FOIA responses that it did not request. The EPA charged to McKesson non-reimbursable costs associated with the 1992 Corrected Consent Decree relating to the Arkwood site.

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In the August 29, 2013 demand/billing letter from the EPA for the period March 1, 2012 through February 28, 2013, \$101,484.41 was sought from McKesson, of which \$25,400.80 was Enforcement Support Charges (ESS) charges by Toeroek Associates, Inc. According to the August 29, 2013 letter, these charges

“relate to records management of the Arkwood, Inc. Site files. The records management includes scanning, imaging, indexing, quality assurance/quality control, administrative record, and/or other related tasks.”

These site-specific ESS charges are assessed at Superfund sites because of the function of converting paper documents to an electronic format and any associated functions. These ESS charges do not include charges related to FOIA work. While Toeroek performs both records management functions and FOIA work, when Toeroek Associates Inc. performs search and review functions for a FOIA request, charges related to search and review are sought from the requester. For the period, March 1, 2012 through February 28, 2013, the FOIA charges sought from McKesson in connection with the EPA responses to its requests were approximately \$186.00. For this same period, Mr. Curt Grisham was not charged in connection with the EPA responses to his requests under FOIA.

The EPA appreciates McKesson's continuing efforts concerning the Arkwood site.

Sincerely,



Gloria Moran  
Assistant Regional Counsel